

Patent  
09/712,812

**REMARKS**

Claims 1-29 are pending in the application.

Claims 1, 12 and 19, the only independent claims, have been amended herein.

Paragraphs 2 and 4 of the Office Action raises an objection noting that the application is a continuation in part of two US applications yet the declaration fails to mention the claimed priority. Applicants are in the process of obtaining a new corrected declaration to address this error and shall submit the corrected declaration to overcome the objection.

Paragraph 5 of the Office Action notes that the title listed above the Abstract must be deleted. This error has been corrected herein.

Claims 1-5, 7-9, 11-20, 22-24, 28 and 29 were finally rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,822,299 (Goodman).

Dependent Claims 6 and 25-27 were rejected under 35 USC 103(a) as being unpatentable over Goodman in view of US Patent 6,523,068 (Beser et al.) and dependent Claims 10 and 21 were rejected as being unpatentable over Goodman in view of US Patent 5,095,535 (Freeburg).

Each of these is respectfully traversed and reconsideration is requested.

A method or system in accordance with Applicants' teachings localizes quality of service estimations to specific communications mediums or physical communication paths within a time-invariant communication network. For example, when a CPE (customer premise equipment) device has one and only one unique physical time-invariant communication path, it allows Applicants' approach to function, since such a system has a-priori knowledge of the physical position of the CPE element in relation to the headend or to a test node element inserted into the physical network in the field. This approach allows for localized physical communication medium quality of service segment judgments based on an individual CPE link's performance as it relates to the performance of other CPE devices that must share the same physical communication medium.

Patent  
09/712,812

While Applicants believe that the original claim language distinguishes over Goodman and any other cited art, in order to advance the application, to eliminate any issues and to even further distinguish thereover, each of independent Claims 1, 12 and 19 has been amended herein to recite that each of the plurality of transmitters has only one unique physical time invariant communication path to the common receiving point.

Goodman is directed to a mesh network in which individual node elements may be communicated to/from several unique communication paths. This network mesh allows *adaptable delivery options* based on an individual node's assessment of the quality as perceived at an ingress point of the decision/delivery node. This is a *switched network with 'variable' physical delivery paths* of a communication element wherein the variability of the path is decided at the egress of each network node (Applicants respectfully direct the Examiner to pages 4-5 of Applicants' application for a brief description of "dynamically allocated communication networks" and "non-dynamically allocated communication networks"). In addition, Applicants note that the quality assessment compared at the local ingress node decision/delivery point of Goodman is not passed further up the signaling chain in an effort to localize a single segment of the network as limiting the individual performance of, for example, a CPE device (or limiting a pool of CPE device's performance) due to a degraded or non-functioning physical connection.

Therefore, Applicants respectfully submit that Goodman fails to teach or suggest a method or system in which the architecture is time-invariant that allows localized physical communication medium quality of service segment judgments based on an individual link's performance, but rather Goodman merely teaches a method to route a communication element along a best perceived physical path based on, and residing only at, the physical node's ingress decision point.

Again, Applicants' teachings are directed to a method and system for *physically locating network degradations* through knowledge of a physical network topology and the network's physical relationship to its subscriber base. Such a method could not be implemented into, and is not taught or suggested by, a switched network such as Goodman that is not physically 'static'.

Patent  
09/712,812

In Goodman's network, it is *not possible* to "compare the quality of service to localize the estimations to a likely physical communication path" since the individual node elements may be communicated to/from *several* communication paths.

For all of the foregoing reasons, Applicants respectfully submit that each of independent Claims 1, 12 and 19, as amended herein, is patentable over Goodman and favorable reconsideration is requested.

Claims 2-11, 13-18 and 20-29 are dependent on one or another of independent Claim 1, 12 or 19, and therefore such dependent claims are submitted to be patentable for at least the same reasons as the independent claims from which they depend.

It is respectfully submitted that in regard to the above claim amendments and remarks that the pending application is patentable over the art of record and prompt review and issuance is accordingly requested. Should the Examiner be of the view that an interview would expedite consideration of this amendment or of the application at large, request is made that the Examiner telephone the Applicants' undersigned attorney at (908) 518-7700 in order that any outstanding issues be resolved.

Respectfully submitted,



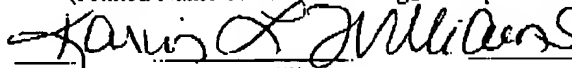
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**Patent**  
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